

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**TECHNICAL ANALYSIS  
SUPPORTING  
ADMINISTRATIVE CIVIL LIABILITY  
AGAINST**

**SOUTH COAST WATER DISTRICT  
FOR  
FAILURE TO COMPLY  
WITH**

**ORDER NO. 96-04  
GENERAL WASTE DISCHARGE REQUIREMENTS  
PROHIBITING SANITARY SEWER OVERFLOWS  
BY  
SEWERING AGENCIES**

**and**

**CALIFORNIA WATER CODE SECTION 13267**

**December 16, 2002**

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## 1. INTRODUCTION

This report provides a summary of factual evidence supporting the administrative imposition of civil liability against South Coast Water District for which civil liability in the amount of \$136,100 is being imposed for violations of California Regional Water Quality Control Board, San Diego Region (SDRWQCB) Order No. 96-04 and California Water Code (CWC) Section 13267. (See Appendix A, Complaint No. R9-2002-0280).

## 2. BACKGROUND

South Coast Water District is a member of the South Orange County Wastewater Authority (SOCWA), formerly the Aliso Water Management Agency. South Coast Water District provides sewerage service to coastal communities in southern Orange County from Aliso Creek to the north down through the San Juan Creek watershed in the former Dana Point Sanitary District and Capistrano Beach Water District service areas north of the City of San Clemente. Sanitary sewer overflows from South Coast Water District's sewage collection system can discharge to Monarch Beach, Salt Creek County Beach, Doheny State Beach, Capistrano Beach as well as Dana Point Harbor, San Juan Creek, and Aliso Creek. Aliso Creek has been the focus of enforcement action by this SDRWQCB due to unidentified sources of bacteria contamination.

The District's total sewage collection system consists of approximately 140 miles of sewer lines and fourteen pump stations which discharge to either SOCWA's Coastal Treatment Plant near Aliso Creek, or the treatment plant in Dana Point on Del Obispo. South Coast Water District has reported thirty-eight sanitary sewer overflows including eight that have resulted in lost beneficial uses of coastal receiving waters since 1996.

On May 9, 1996 the SDRWQCB adopted Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewering Agencies*. (See Appendix B, Order No. 96-04.) Order No. 96-04 prohibits sanitary sewer overflows upstream of wastewater treatment facilities and establishes uniform requirements for reporting sanitary sewer overflows. Order No. 96-04 also requires all sewerage agencies within the San Diego Region to develop, implement, and maintain Sanitary Sewer Overflow Prevention Plans and Sanitary Sewer Overflow Response Plans. In addition, Order No. 96-04 requires all sewerage agencies to ensure that collection system personnel have the plans available to them at all times and produce them upon request.

On June 14, 2001 the SDRWQCB conducted a routine compliance inspection of the South Coast Water District sewage collection system. During the inspection the SDRWQCB requested to review the District's Sanitary Sewer Overflow Prevention Plan. Supervisory level personnel at the District were unable to produce a copy of the Sanitary Sewer Overflow Prevention Plan. Consequently the SDRWQCB notified District personnel that a follow-up inspection would be conducted at which time a review of all documents required by Order No. 96-04 would be conducted. The follow-up inspection was conducted on August 3, 2001. Again, South Coast Water District could not provide a copy of its Sanitary Sewer Overflow Prevention Plan. Not until July 16, 2002 during a joint U.S. Environmental Protection Agency/SDRWQCB inspection was a Sanitary Sewer Overflow Prevention Plan provided by South Coast Water District. While



the document was dated February, 2002, there is no clear evidence when the Sanitary Sewer Overflow Prevention Plan was developed.

The SDRWQCB has determined that the development, implementation, and continuous update and review of the Sanitary Sewer Overflow Prevention Plan is an essential element in the elimination of preventable sanitary sewer overflows and an important step in the protection of coastal receiving water quality.

Order No. 96-04 also requires the submission of complete sanitary sewer overflow report forms within five days after a sanitary sewer overflow that is greater than 1,000 gallons or after any volume spill that reaches a surface water. Addendum No. 5 to Order No. 96-04 clarifies these reporting requirements. (See Appendix C, Addendum No. 5 to Order No. 96-04.) On three separate occasions, after the adoption of Addendum No. 5 to Order No. 96-04, the SDRWQCB notified South Coast Water District that its sanitary sewer overflow reports were incomplete and required submittal of the missing information under the authority of CWC Section 13267. On December 21, 2001 the SDRWQCB issued Notice of Violation No. 2001-373 to South Coast Water District for submitting an incomplete response to a CWC Section 13267 request requiring the submittal of the information necessary to complete a sanitary sewer overflow report form for a sewage spill that occurred on July 17, 2001. South Coast Water District experienced a 150-gallon sanitary sewer overflow on December 23, 2001 that resulted in the posting and closure of Monarch Beach and Salt Creek State Beach for three days. The District failed to report the sanitary sewer overflow to the SDRWQCB within the required 24-hour initial reporting period required by Order No. 96-04. The sanitary sewer overflow was not reported to the SDRWQCB until four days after the spill.

Accurate and timely reporting of sanitary sewer overflows is essential for the SDRWQCB to perform its regulatory function in evaluating water quality and making the necessary decisions to perform its obligation to protect California's waters.

### **3. ALLEGATIONS**

The following allegations against the South Coast Water District are the basis for assessing administrative civil liability and also appear in Complaint No. R9-2002-0280.

#### **3.1. Failure to Develop, Implement, and Maintain a Sanitary Sewer Overflow Prevention Plan**

Order No. 96-04, Provision B.5, requires sewerage agencies to develop, implement, and maintain a Sanitary Sewer Overflow Prevention Plan within six months of adoption of the Order. South Coast Water District failed to supply the Regional Board with a Sanitary Sewer Overflow Prevention Plan during a compliance inspection conducted on June 14, 2001. South Coast Water District failed to develop, maintain, and implement a Sanitary Sewer Overflow Prevention Plan from June 14, 2002 until at least February 1, 2002. Therefore, South Coast Water District is in violation of Order No. 96-04 for 233 days.



**3.2. Failure to Comply with California Water Code Section 13267 Request for Information**

On August 14, 2001 the SDRWQCB issued South Coast Water District a CWC Section 13267 request for information. The CWC Section 13267 request required the District to submit, among other things, the number of days that warning signs were posted at Doheny State Beach resulting from a sewage spill on July 17, 2001. This information was due on September 4, 2001 and was necessary to complete the District's sanitary sewer overflow report form. The District's reply, received September 6, 2001, was received two days late and did not contain the required information regarding the number of days warning signs were posted at Doheny State Beach. The required information was not received until January 11, 2002. Therefore, South Coast Water District is in violation of CWC Section 13267 for a total of 128 days.

**3.3. Incomplete Sanitary Sewer Overflow Reporting**

Monitoring and Reporting Program No. 96-04, Section B.1.e, requires South Coast Water District to submit complete sanitary sewer overflow report forms for sewage discharges that enter waters of the United States no later than 5 days following the starting date of the sanitary sewer overflow. South Coast Water District failed to submit a complete sanitary sewer overflow report for overflows occurring on July 17, 2001, December 7, 2001, and August 13, 2002. Therefore, South Coast Water District is in violation of Order No. 96-04 for submitting incomplete sanitary sewer overflow reports on three occasions, which is considered three days of violation.

**3.4. Late Reporting of Sanitary Sewer Overflow to Waters of the State**

Monitoring and Reporting Program No. 96-04, Section B.2.a. requires that all sanitary sewer overflows resulting in a discharge greater than 1,000 gallons or that reach a surface water to be reported to the Regional Board within 24 hours from the time (1) the discharger has knowledge of the sanitary sewage overflow, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures. South Coast Water District failed to report a December 23, 2001 sanitary sewer overflow that resulted in the posting of Monarch and Salt Creek Beaches, until four days after the spill. South Coast Water District also failed to provide an acceptable explanation for the late report. Therefore, South Coast Water District is in violation of Order No. 96-04. This is considered three days of violation.

**4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY**

With regards to the violations alleged in Sections 3.1, 3.3, and 3.4 above, CWC Section 13350(a) states that any person who intentionally or negligently violates any waste discharge requirements issued by a regional board may be liable civilly. Where there is no discharge, but waste discharge requirements have been violated, civil liability may be administratively imposed under CWC Section 13350(e)(1)(B).



With regards to the violation alleged in Section 3.2. above, CWC Section 13268 states that any person failing or refusing to furnish technical reports required by Section 13267(a) is guilty of a misdemeanor and civil liability may be administratively imposed under CWC Section 13268(b)(1).

#### **4.1. Factors to be Considered When Determining Administrative Civil Liability**

Section 13327 of the CWC requires that the following factors be taken into consideration in determining the amount of civil liability: the nature, circumstance, extent, and gravity of the violations; whether the discharge is susceptible to cleanup and abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on ability to continue in business; any voluntary cleanup efforts undertaken; any prior history of violations; the degree of culpability; economic savings, if any, resulting from the violations; and other matters as justice may require.

##### **4.1.1. Failure to Develop, Implement, and Maintain a Sanitary Sewer Overflow Prevention Plan**

###### **4.1.1.1. Nature, Circumstance, Extent, and Gravity of Violation**

Order No. 96-04 requires all sewerage agencies to prepare a Sanitary Sewer Overflow Prevention Plan by November 9, 1996. The plan is not required to be submitted to the SDRWQCB for approval but is intended to be used as a tool for sewerage agencies to eliminate preventable sanitary sewer overflows. As a result, Order No. 96-04 requires sewerage agencies to review their Sanitary Sewer Overflow Prevention Plans following all sanitary sewer overflows, amend the plan as needed, and ensure sewerage agency personnel have access to the Sanitary Sewer Overflow Prevention Plan including all updates and revisions at all times. The plan must be submitted to the SDRWQCB upon request. The intent of this requirement is to emphasize the prevention and minimization of sanitary sewer overflows rather than simply responding to them.

On November 23, 1999, in response to a sanitary sewer overflow, the SDRWQCB first requested a copy of South Coast Water District's Sanitary Sewer Overflow Prevention Plan. In response, the District submitted a document titled "*Aliso Water Management Agency Sewage Spill Minimization Workplan*". (See Appendix D, *Aliso Water Management Agency Sewage Spill Minimization Workplan*.) The document appears to have been prepared prior to October 1994. The document made reference to only one of the District's eleven pump stations, which is entirely inadequate to prevent or minimize sanitary sewer overflows within its 150-mile collection system. On May 8, 2000, the SDRWQCB requested a



copy of the District's amended Sanitary Sewer Overflow Prevention Plan in response to another sanitary sewer overflow. On May 26, 2000 the District submitted another copy of the 1994 document with no amendments.

By letter dated February 7, 2001, the SDRWQCB notified the District that its Sanitary Sewer Overflow Prevention Plan should be updated due to clarifications in the reporting process. An additional letter on May 3, 2001 advised the District to minimize the potential for sanitary sewer overflows by reviewing, and if necessary, updating its Sanitary Sewer Overflow Prevention Plan. On June 14, 2001 the SDRWQCB conducted a compliance inspection of the South Coast Water District sewage collection system. At that time, the SDRWQCB requested a copy of the District's Sanitary Sewer Overflow Prevention Plan. The pump station supervisor assisting the SDRWQCB during the inspection could not produce a copy of the Sanitary Sewer Overflow Prevention Plan upon request. At that time, the SDRWQCB verbally notified District personnel that a follow-up inspection would be conducted to review the necessary documents required by Order No. 96-04. On August 3, 2001 the follow-up inspection was conducted. Again, South Coast Water District could not produce a copy of the District's Sanitary Sewer Overflow Prevention Plan. Subsequent to the August inspection, the SDRWQCB received a copy of the District's Sanitary Sewer Overflow Response Plan on August 10, 2001.

On August 14, 2001 the SDRWQCB issued another Notice of Violation, in response to a sanitary sewer overflow, and again requested an updated copy of its Sanitary Sewer Overflow Prevention Plan, if amended after the latest spill. The District responded on September 4, 2001 notifying the SDRWQCB that "The District is reviewing these documents as part of a comprehensive look at sewer overflows in general. Copies of the amended documents will be provided when they have been updated." By letter dated September 18, 2001 the SDRWQCB again requested a copy of the District's Sanitary Sewer Overflow Prevention Plan. (See Appendix E, 9/18/01 SDRWQCB letter.) The District failed to respond and no Sanitary Sewer Overflow Prevention Plan was submitted. A Notice of Violation was issued to the District on December 21, 2001 specifically addressing the District's failure have a Sanitary Sewer Overflow Prevention Plan after six previous written or verbal requests for the document. (See Appendix F, NOV 2001-368.) The SDRWQCB requested a firm date from the District regarding when the Sanitary Sewer Overflow Prevention Plan would be completed. South Coast Water District



replied by letter dated January 4, 2002, stating, “South Coast Water District intends to have its Sanitary Sewer Overflow Prevention Plan completed and implemented by the middle of February 2002. If desired, the District will inform the Regional Board of the completion of this process and make copies of the plan available.” (See Appendix G, 1/4/02 SCWD Letter.)

It was not until a joint U.S. Environmental Protection Agency/SDRWQCB inspection of the South Coast Water District sewage collection system on July 16, 2002, that the District’s presented the document, dated February 2002, to the SDRWQCB. (See Appendix H, Sanitary Sewer Overflow Prevention Plan and Sanitary Sewer Overflow Response Plan.) If the Sanitary Sewer Overflow Prevention Plan had actually been completed in February 2002, no explanation was given as to why the plan was not submitted until July 16, 2002.

The SDRWQCB considers this violation to have environmental significance and that it is more than a reporting violation due to the direct relationship between the absence of an adequate Sanitary Sewer Overflow Prevention Plan and the occurrence and volume of preventable sanitary sewer overflows.

**4.1.1.2. Degree of Toxicity of the Discharge**

This factor does not apply to this violation.

**4.1.1.3. Whether the Discharge is Susceptible to Cleanup and Abatement**

This factor does not apply to this violation.

**4.1.1.4. Voluntary Cleanup Efforts Undertaken**

This factor does not apply to this violation.

**4.1.1.5. Degree of Culpability**

South Coast Water District failed to develop, implement, and maintain an adequate Sanitary Sewer Overflow Prevention Plan since the date the plan was required until February 2002. When the SDRWQCB first requested the Sanitary Sewer Overflow Prevention Plan an entirely inadequate document was submitted. In comparison, when other SOCWA member agencies (City of Laguna Beach and Moulton Niguel Water District) were requested to submit copies of their Sanitary Sewer Overflow Prevention



Plans, recently developed, individual plans following the intent of Order No. 96-04 were submitted upon request. No other member agency submitted a copy of the 1994 Aliso Water Management Agency document as its Sanitary Sewer Overflow Prevention Plan.

The District failed to supply the SDRWQCB a copy of the Sanitary Sewer Overflow Prevention Plan until an inspection on July 16, 2002 after seven previous written and verbal requests for the document. Numerous requests also notified the District that failure to implement, maintain, and provide the Plan when requested was a violation of Order No. 96-04 which could subject the District to monetary penalties. Even after the document was apparently drafted, the District chose not submit a copy to the SDRWQCB, rather it waited until another request was made. The District's behavior with regards to the SDRWQCB's authority on this matter was both intentional and negligent based its lack of effort to comply with the requirements of Order No. 96-04 and blatant disregard to numerous written requests.

#### **4.1.1.6. Prior History of Violations**

Since the adoption of Order No. 96-04 through November 2002, South Coast Water District has reported thirty-eight sewage spills, all of which are violations of Order No. 96-04. This equates to the second highest number of spills per mile of sewer line of the sewerage agencies regulated by Order No. 96-04 that are located in Orange County due to the relatively small size of its sewage collection system.

Because of the close proximity of the District's sewage collection system to the coastal beaches and Aliso and San Juan Creeks, nearly all, if not all, sewage spilled either adversely affected or threatened to affect the water quality of ocean waters and threatened public health.

SDRWQCB records indicate South Coast Water District failed to submit quarterly sanitary sewer overflow report summaries required by Order No. 96-04 beginning with the first quarter, July-September 1996 through the October-December 1997 report.

Specific instances of violations of CWC Section 13267 and Order No. 96-04 are the subject of this complaint.



**4.1.1.7. Ability to Pay and Effect on Ability to Continue in Business**

At this time, the SDRWQCB has no information that the South Coast Water District is unable to pay the proposed liability or how payment of the proposed liability would affect its ability to provide required services. While it is not anticipated that the payment of the maximum administrative civil liability for violations cited in Complaint No. R9-2002-0280 would pose a significant financial hardship, the District has the principle burden of establishing a claim of its inability to pay.

**4.1.1.8. Economic Savings, if any, Resulting from the Violation**

The District reported that \$2,400 was expended for outside consultants with regards to the preparation of its Sanitary Sewer Overflow Prevention Plan. The District also cites numerous hours spent by District personnel with regards to preparation and review of the document. It is the SDRWQCB's opinion that the District should have dedicated at least 40 hours for information gathering, and document review. Based on the SDRWQCB's staff costs of \$80 per hours, that would equate to \$3,200, for a total cost savings of \$5,800 over six and one-quarter years. Based on an interest rate of 5% per year, the cost savings for not preparing its Sanitary Sewer Overflow Prevention Plan by the required due date of November 9, 1996, is approximately \$1,695. While the calculated cost of the development of the Sanitary Sewer Overflow Prevention Plan was not substantial, there may have been significant costs avoided by failing to implement preventive measures called for in an adequate Sanitary Sewer Overflow Prevention Plan.

**4.1.1.9. Other Matters as Justice May Require**

Over the course of dealing with South Coast Water District regarding the violations detailed in this entire report, the SDRWQCB has invested an estimated 350 hours to investigate and consider action regarding this matter. This includes the preparation of six Notices of Violation and follow-up, four CWC Section 13267 letters and follow-up, one staff enforcement letter with follow-up, one follow-up inspection, and preparation of documents associated with this enforcement action. At an average rate of \$80 per hour, the total investment of SDRWQCB resources is \$28,000.



#### **4.1.2. Failure to Comply with California Water Code Section 13267 Request for Information**

##### **4.1.2.1. Nature, Circumstance, Extent, and Gravity of the Violation**

On July 17, 2001 South Coast Water District reported a 3,000 gallon sanitary sewer overflow that reached Doheny State Beach. On July 18, 2001 the District submitted a final sanitary sewer overflow report for the spill. The final report was determined by the SDRWQCB to be incomplete. (See Appendix I, 7/17/01 Final Sanitary Sewer Overflow Report.) Notice of Violation No. 2001-240 was issued to the District on August 14, 2001 along with a request for technical information under the authority of CWC Section 13267. (See Appendix J, NOV 2001-240.) The request for technical information directed South Coast Water District to, among other things, submit the information necessary to make the July 17, 2001 sewage spill report complete.

On September 6, 2001, the SDRWQCB received the District's response to the request for information. (See Appendix K, 9/4/01 SCWD Response to NOV 2001-240.) The response was deemed to be incomplete because the District did not provide the information regarding the number of days Doheny State Beach was posted due to contamination from the spill. The response was received two days after the required due date. The Regional Board notified the District on September 18, 2001 that its response was still incomplete. South Coast Water District did not supply the information identified in the September 18, 2001 letter and a second Notice of Violation was issued on December 21, 2001. (See Appendix L, NOV 2001-373.) The District finally submitted a complete sanitary sewer overflow report for the July 17, 2001 sewage spill on January 11, 2002, one hundred twenty eight days after the CWC Section 13267 due date even after being notified that failing to provide the information could subject the District to monetary penalties. (See Appendix M, SCWD 1/11/02 Response to NOV 2001-373.)

##### **4.1.2.2. Degree of Toxicity of the Discharge**

This factor does not apply to this reporting violation.

##### **4.1.2.3. Whether the Discharge is Susceptible to Cleanup and Abatement**

This factor does not apply to this reporting violation.



**4.1.2.4. Voluntary Cleanup Efforts Undertaken**

This factor does not apply to this reporting violation.

**4.1.2.5. Degree of Culpability**

South Coast Water District willingly chose to withhold vital information from its sanitary sewer overflow report and again from its response to a CWC Section 13267 request for information even after being notified that failing to provide the information could subject the District to monetary penalties. The District's response received on September 6, 2001 stated that information regarding the number of days the beach was posted was not available to them but instructed the SDRWQCB that it could obtain the information from the Orange County Health Department. It is deemed by the SDRWQCB that South Coast Water District's degree of culpability with regards to this matter is quite high, due to the District's knowing how and where to obtain the necessary information regarding receiving water posting but choosing to not supply the information upon request. The District's disinterest toward the impact its sanitary sewer overflow had on receiving waters and the number of days recreational waters were closed to the public during the peak summer season is disturbing. The SDRWQCB considers this information essential with regards to the review of the effect and impact of sanitary sewer overflows on receiving waters. This information is required of all sewerage agencies subject to Order No. 96-04 and is regularly submitted by all other sewerage agencies as part of a sanitary sewer overflow report.

**4.1.2.6. Prior History of Violation**

See Section 4.1.1.6.

**4.1.2.7. Ability to Pay and Effect on Ability to Continue in Business**

See Section 4.1.1.7.

**4.1.2.8. Economic Savings, if any, Resulting From the Violation**

It is estimated that the South Coast Water District enjoyed very little if any economic benefit by failing to provide the information requested in the CWC Section 13267 request for information.



**4.1.2.9. Other Matters as Justice May Require**

See Section 4.1.1.9.

**4.1.3. Incomplete Sanitary Sewer Overflow Reporting**

**4.1.3.1. Nature, Circumstance, Extent and Gravity of Violation and Degree of Toxicity**

South Coast Water District submitted an incomplete sanitary sewer overflow report for a spill occurring on July 17, 2001 in violation of Order No. 96-04 reporting requirements. (See Appendix I, 7/17/01 Final SSO Report.) The report failed to provide the address where the overflow occurred, the sanitary sewer overflow structure identification, and the number of days that warning signs were posted at Doheny State Beach. As a result, the SDRWQCB issued Notice of Violation No. 2001-240 and a CWC Section 13267 requirement for information to complete the incomplete report. (See Appendix J, NOV 2001-240.) This information was due on September 4, 2001.

A second incomplete sanitary sewer overflow report was submitted for a spill occurring on December 7, 2001. (See Appendix N, 12/7/01 Final SSO Report.) This report also failed to provide the complete address where the overflow occurred, whether or not signs were posted to warn of contamination, the location of the posted signs, and the number of days that warning signs were posted. The spill did result in the closure of receiving waters. A Notice of Violation, No. 2001-374, and CWC Section 13267 order for information was issued to the District on December 21, 2001. (See Appendix O, NOV 2001-374.) This information was due on January 7, 2002.

South Coast Water District submitted a third incomplete sanitary sewer overflow report for a spill occurring on August 13, 2002. (See Appendix P, 8/13/02 Final SSO Report.) This report failed to provide the number of days warning signs were posted at Dana Point Harbor as a result of the spill. Notice of Violation No. R9-2002-0295 and a CWC Section 13267 order for information was issued to the District on August 30, 2002 to obtain the missing information. (See Appendix Q, NOV R9-2002-0295.) This information was due on September 10, 2002.

Thorough reporting of all sanitary sewer overflows gives the SDRWQCB the necessary information to evaluate the impacts of sewage spills on receiving waters. Each incomplete sanitary sewer



overflow report violation addressed in this enforcement action omitted the number of days receiving waters were posted warning the public of contaminated water resulting in the loss of REC-1 and REC-2 beneficial uses.

**4.1.3.2. Degree of Toxicity of the Discharge**

This factor does not apply to this reporting violation.

**4.1.3.3. Whether the Discharge is Susceptible to Cleanup and Abatement**

This factor does not apply to this reporting violation.

**4.1.3.4. Voluntary Cleanup Efforts Undertaken**

This factor does not apply to this reporting violation.

**4.1.3.5. Degree of Culpability**

South Coast Water District has repeatedly submitted incomplete sanitary sewer overflow reports even after receiving notification from the SDRWQCB that failing to submit complete reports is a violation of Order No. 96-04. This is the underlying basis for imposition of administrative civil liability.

In place of submitting the number of days receiving waters were posted as the result of a July 17, 2001 sewage spill, the South Coast Water District elected to notify the SDRWQCB that the information could be obtained from the Orange County Health Care Agency rather than obtaining the information and providing it to the SDRWQCB as required. South Coast Water District's response to the SDRWQCB directives conveys the District's lack of interest in complying with regional board authority and perhaps the effect of its sewage spills on receiving waters or to the public.

**4.1.3.6. Prior History of Violation**

See Section 4.1.1.6.

**4.1.3.7. Ability to Pay and Effect on Ability to Continue in Business**

See Section 4.1.1.7.



**4.1.3.8. Economic Savings, if any, Resulting From the Violation**

It is estimated that the South Coast Water District enjoyed very little if any economic benefit by failing to provide complete sanitary sewer overflow reports.

**4.1.3.9. Other Matters as Justice May Require**

See Section 4.1.1.9.

**4.1.4. Late Reporting of a Sanitary Sewer Overflow to Waters of the State**

**4.1.4.1. Nature, Circumstance, Extent, and Gravity of Violation**

Order No. 96-04 requires all sewerage agencies to report sanitary sewer overflows greater than 1,000 gallons or a spill of any volume that enters waters of the State to the SDRWQCB within 24 hours from the time that (1) the discharger has knowledge of the sanitary sewage overflow; (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures.

South Coast Water District experienced a 150-gallon sanitary sewer overflow on December 23, 2001. (See Appendix R, 12/23/01 Final SSO Report.) The spill was not reported to the SDRWQCB until four days later. The spill resulted in a discharge to Salt Creek and a loss of beneficial uses at Salt Creek County Beach and Monarch Beach for four days. The SDRWQCB issued South Coast Water District a Notice of Violation for their failure to report the spill in accordance with the reporting requirements contained in Order No. 96-04. (See Appendix S, NOV 2002-0012.) After the issuance of the Notice of Violation, the District provided no documentation that the report was made in accordance with Order No. 96-04.

South Coast Water District's failure to report the sanitary sewer overflow in accordance with the requirements of Order No. 96-04 undermines the SDRWQCB's ability to accurately assess water quality and inform the public regarding water quality.

**4.1.4.2. Degree of Toxicity of the Discharge**

This factor does not apply to this reporting violation.



**4.1.4.3. Whether the Discharge is Susceptible to Cleanup and Abatement**

This factor does not apply to this reporting violation.

**4.1.4.4. Voluntary Cleanup Efforts Undertaken**

This factor does not apply to this reporting violation.

**4.1.4.5. Degree of Culpability**

South Coast Water District exhibited a high degree of culpability with regards to its failure to report a sanitary sewer overflow that resulted in the posting of receiving waters. In conjunction with the other violations addressed in this enforcement action, the District exhibited indifference toward the SDRWQCB's authority and the requirements of Order No. 96-04.

**4.1.4.6. Prior History of Violations**

See Section 4.1.1.6.

**4.1.4.7. Ability to Pay and Effect on Ability to Continue in Business**

See Section 4.1.1.7.

**4.1.4.8. Economic Savings, if any, Resulting From the Violation**

The SDRWQCB has not identified any significant economic benefit enjoyed by South Coast Water District with regards to this violation.

**4.1.4.9. Other Matters as Justice May Require**

See Section 4.1.1.9.

**4.2. Minimum and Maximum Civil Liability Amounts**

Pursuant to CWC Section 13350(e)(1), civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs. Where there is no discharge, but an order issued by the regional board is violated, civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs pursuant to CWC Section 13350(e)(1)(B).



Pursuant to CWC Section 13268(b)(1), civil liability may be imposed for failure to submit technical reports required by CWC Section 13267 in an amount which shall not exceed \$1,000 for each day in which the violation occurs.

The table below summarizes the minimum and maximum civil penalties that may be imposed by the SDRWQCB with regard to the four allegations contained in Complaint No. R9-2002-0280. Also included in the table is a summary of the recommended per day assessment described in Section 4.3.

<b>Violation</b>	<b>Water Code Section</b>	<b>Days of Violation</b>	<b>Liability</b>		
			<b>Minimum (per day)</b>	<b>Maximum (per day)</b>	<b>Recommended (per day)</b>
Failure to Develop, Implement, and Maintain, Sanitary Sewer Overflow Prevention Plan	13350	233	\$100	\$5,000	\$350
Failure to Comply with CWC Section 13267	13268	128	\$0	\$1,000	\$300
Incomplete Sanitary Sewer Overflow Reports	13350	3	\$100	\$5,000	\$500
Late Sanitary Sewer Overflow Reporting	13350	3	\$100	\$5,000	\$1,000

#### **4.3. Proposed Civil Liability Per Violation**

The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors discussed in section 4.1. as well as the minimum and maximum civil liability the SDRWQCB may assess as discussed in section 4.2.

##### **4.3.1. Failure to Develop, Implement, and Maintain a Sanitary Sewer Overflow Prevention Plan**

South Coast Water District failed to produce a copy of its Sanitary Sewer Overflow Prevention Plan to the SDRWQCB during a routine compliance inspection on June 14, 2001. South Coast Water District also failed to produce a copy of its Sanitary Sewer Overflow Prevention Plan on a follow-up inspection conducted on August 3, 2001 when the District received prior notification that a document inspection would take place in the near future. In addition, the South Coast Water District failed to



provide the SDRWQCB a copy of its Sanitary Sewer Overflow Prevention Plan after it was completed until another compliance inspection was conducted on July 16, 2002. When provided, the document was dated February, 2002. The degree of culpability exhibited by the District with regards to this violation does not warrant assessment of the minimum liability. Therefore, the proposed civil liability is four hundred dollars per day (\$400) for 233 days, for a total of ninety three thousand two hundred dollars (\$93,200).

#### **4.3.2. Failure to Comply with California Water Code Section 13267**

South Coast Water District failed to provide information requested under California Water Code Section 13267 for a total of 128 days. Therefore, the proposed civil liability is three hundred dollars per day (\$300) for 128 days, for a total of thirty eight thousand four hundred dollars (\$38,400).

#### **4.3.3. Incomplete Sanitary Sewer Overflow Reporting**

South Coast Water District failed to submit complete sanitary sewer overflow reports on three occasions. Two of the occasions occurred after the SDRWQCB sent written correspondence to the District notifying it that failure to submit complete sanitary sewer overflow reports was a violation of Order No. 96-04 and subjected it to monetary penalties. Due to the repeated nature of this violation, and degree of culpability exhibited by the District, the minimum liability for these violations is not warranted. Therefore, the proposed civil liability is five hundred dollars (\$500) per violation for three days of violation, for a total of one thousand five hundred dollars (\$1,500).

#### **4.3.4. Late Reporting of a Sanitary Sewer Overflow to Waters of the United States**

South Coast Water District failed to report a 150-gallon sanitary sewer overflow on December 23, 2001 within the required 24-hour period. The sanitary sewer overflow resulted in the posting and closure of Monarch Beach and Salt Creek County Beach for four days. The sanitary sewer overflow was not reported until four days after the spill occurred, three days late. Therefore, the proposed civil liability is one thousand dollars (\$1,000) for three day of violation, for a total of three thousand dollars (\$3,000).

#### **4.4. Comparison of Proposed Civil Liability to SWRCB Guidance to Implement the Water Quality Enforcement Policy, Assessment Matrix**

The SWRCB Guidance to Implement the Water Quality Enforcement Policy contains an Assessment Matrix as seen below. The matrix ranks the Compliance



Significance (Discharger) and Environmental Significance (Discharge) as “Minor,” “Moderate,” or “Major.” Based upon the determination of the two categories, a range of civil liability is proposed. This matrix assists the Regional Board in determining after a consideration of the factors in section 4.1., whether the proposed administrative civil liability is appropriate.

### **Assessment Matrix**

<b>Compliance Significance</b>	<b>Environmental Significance</b>		
	<b>Minor</b>	<b>Moderate</b>	<b>Major</b>
<b>Minor</b>	\$100 - \$2,000	\$1,000 - \$20,000	\$10,000 - \$100,000
<b>Moderate</b>	\$1,000 - \$20,000	\$10,000 - \$100,000	\$50,000 - \$200,000
<b>Major</b>	\$10,000 - \$100,000	\$50,000 - \$200,000	\$100,000 to maximum amount

#### **4.4.1. Failure to Develop, Implement, and Maintain a Sanitary Sewer Overflow Prevention Plan**

Failing to develop, implement, and maintain a Sanitary Sewer Overflow Prevention Plan is considered a “Moderate” Environmental Significance due to the direct correlation between the implementation of a Sanitary Sewer Overflow Prevention Plan and the prevention of sanitary sewer overflows. This violation is considered a “Major” Compliance Significance (Discharger) due to the District’s exhibited disinterest in complying with the requirement. Using the matrix, the range of an ACL for a “Moderate” Environmental Significance” with a “Major” Compliance Significance is \$50,000 - \$200,000. The total proposed civil liability of \$93,200 for this violation is within the matrix range.

#### **4.4.2. Failure to Comply with California Water Code Section 13267 Request for Information**

Failing to comply with the SDRWQCB’s request for information under the authority of California Water Code Section 13267 is a “Minor” Environmental Significance. This violation is considered a “Major” Compliance Significance (Discharger) due to the effect of the District’s actions undermining the SDRWQCB’s enforcement authority. Using the matrix, the range of an ACL for a “Minor” Environmental Significance” with a “Major” Compliance Significance is \$10,000 - \$100,000. The total proposed civil liability of \$38,400 for this violation is within the matrix range.



#### **4.4.3. Incomplete Sanitary Sewer Overflow Reporting**

Failing to submit complete sanitary sewer overflow reports ranks as a “Minor” Environmental Significance. These violations are considered a “Major” Compliance Significance (Discharger) due to the repeated nature of the violations and the effect of the District’s actions on the SDRWQCB’s ability to effectively regulate the reporting of sanitary sewer overflows. Using the matrix, the range of an ACL for “Minor” Environmental Significance and “Major” Compliance Significance is \$10,000 to \$100,000 per violation. The total proposed civil liability of \$1,500 for this violation is below the matrix range.

#### **4.4.2. Late Reporting of Sanitary Sewer Overflow to Waters of the United States**

Failing to report a sanitary sewer overflow that entered waters of the United States is considered “Moderate” Environmental Significance. This violation is considered a “Moderate” Compliance Significance (Discharger) due to the District’s recalcitrant attitude towards complying with the requirements of Order No. 96-04. Using the matrix, the range of an ACL for a “Minor” Environmental Significance” with a “Major” Compliance Significance is \$50,000 - \$200,000. The proposed civil liability of \$3,000 is below the matrix range.

#### **4.5. Total Proposed Administrative Civil Liability**

The total proposed civil liability in this matter, accounting for all four violations is \$136,100.